

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

NO. 5:08-CR-247-FL-1  
NO. 5:10-CV-227-FL

LARRY LAVONNE BERRY,

Movant,

v.

UNITED STATES OF AMERICA

Respondent.

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ORDER

Movant Larry Lavonne Berry filed a post-judgment motion (DE # 119) captioned “petitioner’s motion for permission to proceed without prepayment of fees and affidavit,” which this court construes as a motion requesting a copy of the transcript from his sentencing hearing at the court’s expense. Also before the court is a motion (DE # 124) requesting a status report on his motion for a transcript at the court’s expense.

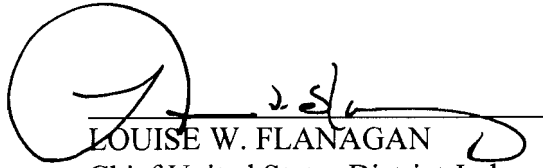
The circumstances under which the court may provide an indigent criminal defendant a copy of his transcript at the court’s expense are addressed by 28 U.S.C. § 753(f). Specifically, § 753(f) states that a free transcript shall be provided to an indigent criminal defendant to bring an action pursuant to 28 U.S.C. § 2255 “if the trial judge . . . certifies that the suit . . . is not frivolous and that the transcript is needed to decide the issue presented by the suit. . . .” 28 U.S.C. § 753(f); see also United States v. MacCollum, 426 U.S. 317, 326 (1976). An indigent defendant must make a showing of a particularized need to obtain a free transcript. See, e.g., United States v. Hill, 34 F. App’x 942, 943 (4th Cir. 2002) (per curiam) (unpublished). An indigent defendant may not obtain

a free transcript “merely to comb the record in the hope of discovering some flaw. United States v. Glass, 317 F.2d 200, 202 (4th Cir. 1963).

In this case, movant states that he requests that the court grant his motion for a free transcript “so that he may pursue any legal options that may be available to him.” Petitioner’s motion for a free transcript does not state any particularized need for the requested transcript. Nor does the court find, upon a review of petitioner’s motion, that the requested document is needed to review petitioner’s motion pursuant to 28 U.S.C. § 2255. Based upon the foregoing, petitioner does not meet the requirements for a free transcript under § 753(f), and his transcript request (DE # 119) is DENIED.

The Clerk of Court is DIRECTED to notify movant of the steps required to obtain a transcript at his own expense. Because the court has ruled upon movant’s motion for a free transcript, his motion for a status report (DE # 124) on this motion is DENIED as moot. To the extent movant seeks to proceed with his motion pursuant to § 2255 without prepayment of fees, his motion DENIED as moot because there is no filing fee for an action pursuant to § 2255.

SO ORDERED, this the 4<sup>th</sup> day of ~~July~~<sup>July</sup>, 2010.

  
LOUISE W. FLANAGAN  
Chief United States District Judge